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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,031	09/26/2006	Yoshitugi Hashiba	MIYG.0002	2343
7590	07/29/2008		EXAMINER	
Stanley P. Fisher REED SMITH LLP Suite 1400 3110 Fairview Park Drive Falls Church, VA 22042			DESAI, HEMANT	
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			3721	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/567,031	<b>Applicant(s)</b> HASHIBA ET AL.
	<b>Examiner</b> Hemant M. Desai	<b>Art Unit</b> 3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 May 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4,6-9,11-13,16-18 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4,6-9,11-13,16-18 and 21-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-4, 6-9, 11-13, 16-18 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 6, the limitations "wherein ....sealed bag (lines 13-14 of claim 1 and lines 14-15 of claim 6) it is not understood what the predetermined temperature is.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 6-11, 16-18, 21-23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bullock et al. (5170609) in view of Moreland (4028024).

Bullock et al. disclose a packaging apparatus comprising a charging device for charging object into a storage bag (see col.6, lines 30-35) having an open end, an air removing device (56a, 56b, figs. 1-2) for expelling air from the storage bag into which the object has been charged, and a sealing device (28a, 28b, 29a, 29b, figs. 1-2) for sealing the open end of the storage bag from which the air has been expelled, wherein

the sealing device is actuated with a slight delay after the air has been expelled from the storage bag by the air removing device (see col. 6, lines 43-48), which meets all the claimed limitations. The phrase "the granular object....gas", claim 1, lines 2-3, "wherein ....sealed bag (lines 13-14 of claim 1 and lines 14-15 of claim 6) is functional language and therefore no patentable weight is given.

Bullock et al., as mentioned above, discloses hopper (not shown), except for a heating device. However, Moreland discloses that it is known in the art to provide the hopper (41, fig. 2) with the heating device (43, fig. 2) to maintain the temperature of the content of the hopper (see col. 3, lines 45-50, which Examiner interprets as a predetermined temperature). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hopper of Bullock et al. with the heating device as taught by Moreland to maintain the temperature of the content of the hopper.

Regarding claim 2, Bullock et al. disclose that the storage bag is formed by sealing a tube transversely.

Regarding claims 3 and 11, Bullock et al. disclose that the air-removing device pinches the storage bag, into which the object has been charged, to expel air therefrom.

Regarding claim 6, the modified packaging apparatus of Bullock et al. disclose a sealing device (28a, 28b, figs. 1-2) for sealing a tube transversely at a first position, a hopper with a heating device, charging device (see col. 30-35) for charging a granular object into the tube sealed at the first position, and a pinching device (56a, 56b) for pinching the tube into which the granular object has been charged, wherein the tube is

sealed transversely at a second position (29a, 29b) opposite the first position with respect to the pinched part, and wherein the sealing device is actuated with a slight delay after the pinching device has been actuated (see col. 6, lines 43-48).

Regarding claim 7, Bullock et al. disclose many variations and alternative drives to drive the sealing and pinching members (see col. 7, lines 3-17).

Regarding claims 8 and 16, Bullock et al. disclose that a face for pinching the tube is elastic and of a shape corresponding to a shape of tube containing the granular object.

Regarding claims 9 and 17-18, Bullock et al. disclose a measuring and packaging apparatus for measuring and packaging a granular object comprising a packaging apparatus of Claim 1, and a measuring device (see col. 30-35) for measuring the granular object to be supplied to the packaging apparatus.

Regarding claim 22, as mentioned above, the modified method of Bullock et al. disclose all the steps claimed in 22.

5. Claims 4, 12-13 and 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bullock et al. (5170609) in view of Cullen (3990872).

Bullock et al. disclose all the claimed limitations except for filling granular material having adsorption ability. However, Cullen teaches a package (figs. 1-3) with granular material having adsorption ability (16) for the purpose of adsorbing moisture and gases (see col. 1, lines 1-5). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the apparatus and method of

Bullock et al. to fill the granular material having adsorption ability to make the package as taught by Cullen for the purpose of adsorbing moisture and gases.

***Response to Arguments***

5. Applicant's arguments filed 5/12/2008 have been fully considered but they are not persuasive. In response to Applicant's arguments that "the granular object being constituted to adsorb a gas recited in claim 1 cannot read on a product 55 shown in Bullock. Furthermore, as admitted by the Examiner, Bullock does not show or suggest using a heating device", it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Ex parte Mahsam, 2 USPQ2d 1647 (1987).

Similarly in response to Applicant's argument that "the secondary reference of Moreland merely shows maintaining the gelatin substance in a feed hopper 41 at the proper fluidic temperature. It is clear that the gelatin substance in Moreland is a fluid, NOT a granule object. Furthermore, Moreland does not show or suggest explicitly or implicitly that the gelatin substance is constituted to adsorb a gas. Furthermore, the proper fluidic temperature of the gratin substance is irrelevant to a predetermined temperature as recited in claim 1.", note that the secondary reference of Moreland teaches a heater to heat the content of the heater at predetermined temperature, therefore the recitation with respect to the type of content of the hopper (fluidic or granular) does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

In response to Applicant's arguments regarding the second 35 U.S.C. 103 (a) rejection of claims 4,12 and 13, note that though with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, Examiner is relying on the Cullen reference to show that it is known in the packaging art to pack the adsorptive granular product (16) in a plastic bag, therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the apparatus and method of Bullock et al. to fill the granular material having adsorption ability to make the package as taught by Cullen for the purpose of adsorbing moisture and gases.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 6:30 AM-5:00 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hemant M Desai/  
Primary Examiner, Art Unit 3721